In the High Court of Judicature at Madras

Dated: 15/02/2006

Coram

The Hon'ble Mr. Justice P.K.MISRA
and
The Hon'ble Mr. Justice R.SUDHAKAR

Contempt Petition.No.117 of 2006

Mr.Jayaprakash .. Petitioner

-Vs-

1. Most Rev. Dr.B.P.Sugandher,
The Moderator,
Church of South India,
No.5, Whites Road, Royapettah,
Chennai - 600 014.

2. Rt. Rev.S.J.Theedore
The Bishop in Karim Nagar,
2-B-66, Brya Road, Mukarampura,
Karim Nagar,
Andra Pradesh - 505 001. .. Respondents

Petition filed under Section 10 & 12 of Contempt of Courts Act praying to punish the respondents for violating the orders passed in I.A. No.20803 of 2005 in O.S.No.7108 of 2005 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

!For Petitioner : Mr.M.Jawahar

^For Respondent : ---

:O R D E R

(Order of the Court was made by R.SUDHAKAR,J.)

This contempt petition has been filed before this Court invoking the Sections 10 & 12 of the Contempt of Courts Act, 70/71 to punish the respondents for violating the order passed in I.A.No.20803 of 2005 in O.S.No.7108 of 2005 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.
2. In the above suit the XVIII Assistant Judge of the City Civil Court passed the following interim order dated 03.11.2005.
"Heard and perused documents. It is stated on the side of petitioners side that R3 is functioning under the authority and control of R2 has send a

letter dated 10.8.2005 with certain instructions to be followed by the R3. In spite of that R3 purposes to convene dioceses counsel meeting from 7th to 9th of November 2005 as per his letter dated 16.9.2005 without observing and carrying out the instructions given by R2. Further more as per regulation IV of constitution of Dioceses council the said meeting can be convened by the Secretary and on the respondent are not empowered to convene such meeting, it is submitted.
This shows that the proposed dioceses counsel meeting from 7 to 9.11 .2005 as called for by R3 is prima facie in proper.

Prima facie case is mad out and balance of convenience is in favour of the petitioner. If ad-interim injunction is not granted the purpose of this suit will fail and lead to several problems causing irreparable loss to the members of the council.
Hence, ad-interim injunction is granted till 3.11.2005 and notice to respondents by taken. Petitioner to complied with Order 39 Rule 3 CPC."
3. It is the case of the petitioner that the order of the City Civil Court was affixed on the Doors of the meeting hall and a police complaint was also preferred. It was submitted that in spite of the order of the Civil Court passed in the above said I.A.No.20803 of 2005 being communicated the respondents convened the meeting and elected office bearers on 08.11.2005 thereby disobeying the interim order of the Civil Court and therefore the above contempt petition has been filed. The matter is numbered and listed before this Court for maintainability in view of the office endorsement with regard to availability of alternative remedy under Order 39 Rule 2-A of CPC.
4. Learned counsel for the petitioner would submit that he has filed the petition before this Court to punish the respondents for disobeying the the interim order as above of the Civil Court. Except as aforesaid no other reason has been given as to why the petition has been filed before this Court. Petitions of this nature are being regularly filed before the High Court invoking the jurisdiction of this Court to punish the alleged Contemnors for violating the orders passed by the Subordinate Courts.
5. Whether a petition of this nature can be filed as a matter of course without approaching the Civil Court which passed the interlocutory order, was sought to be assailed by the counsel that even though applications are filed before the Subordinate Court under the Code to punish the alleged contemners in case of contempt of its order, the Subordinate Courts are unwilling to proceed with the matter, stating that the same can be taken up along with the suit and therefore, the affected persons are forced to knock at the doors of the High Court. We are not inclined to subscribe to a general plea of this nature. In the instant case, there is no such pleading to that effect. On the contrary, an application as contemplated under Order 39 Rule 2-A of the Civil Procedure Code has not been filed before the Subordinate Court. It is not the case of the petitioner/applicant that the Subordinate Court has refused to entertain an application and pass appropriate orders. When such is the case, this Court should not be called upon to take up such applications as a matter of course, as has been done in this case. It is not desirable to exercise the extraordinary jurisdiction of the High Court under Sections 10 and 12 of the Contempt of Courts Act against the alleged contemner for violation of the order of the Subordinate Court. In this regard, it will be relevant to refer to a decision of our High Court reported in AIR 1966

Madras 21 (Ramalingam vs. Mahalinga Nadar), wherein it has been held as follows:

"On the contrary, it would be in the interests of justice to exercise contempt jurisdiction, or to commence to do so, only when the facts on record ex facie support such a proceeding; any detailed enquiry must be left to the Court which has passed the order and which is presumably fully acquainted with the subject-matter of its own decree of temporary prohibitory injunction. For this reason, we are of the view that the Order XXXIX, Rule 2(3) (Rule 2-A) of the Civil Procedure Code is a far more adequate and satisfactory remedy in such cases. Again, where the situation is strictly inter parties and third party rights are not involved, it is clearly more desirable that the Court which made order of injunction, should go into the facts, and ascertain the truth of alleged disobedience and the extent to which it has been wilful."

Further, in AIR 1971 SC 221,(Perspective Publications (Pvt) Ltd. Vs. State of Maharashtra) it has been held as follows:
"The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice". (Per Grover,) Contempt of Court is essentially a matter which concerns the administration of justice and the dignity and authority of judicial tribunals. It is not a right of a party to be invoked for the redress of his grievances. It is not also a mode by which the rights of a party, adjudicated upon by a Tribunal can be enforced against another party. Moreover, if the matter, as in the present case, requires a detailed enquiry, it must be left to the court which passed the order and which presumably is fully acquainted with the subject-matter of its own order. When the matter relates to mere infringement of an order, as between parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order, merely because other remedies may take time or are more circumlocutory in character. Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it (Vide (1964) 68 Cal WN 148, AIR 1951 Pat 231, AIR 1966 Mad 21 and AIR 1971 All 231)."
6. While considering the power of the Civil Court in enforcing its order invoking the power under Order 39 Rule 2-A of the CPC, a Division Bench of this Court in the case reported in 2004 (5) CTC 332 (PVG Industries Vs. M/s.Premier Industries Drives (P) Limited), while confirming the order of one of us(P.K.Misra,J.) held as follows:
"Order 39, Rule 2-A, C.P.C. deals with consequence of disobedience or breach of injunction and it contemplates that, "in the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 .. any Court... may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison...". Thus Order 39, Rule 2-A, C.P.C. even contemplates the order of attachment of the property."

It is therefore obvious that the remedy provided under the code as aforesaid is equally effective and efficacious. Unless and until the party concerned is able to show that the remedy provided in the code will not be effective and further depending upon the nature of the injury, its seriousness and the

threat it created to the enforcement of the order of the Court, and the public interest of the administration of justice which has been affected is so large that it requires the consideration of the High Court to exercise its inherent power. Petitions of this nature will not as a matter of right be entertained. The Court will be circumspect to invoke the jurisdiction, save and except in special and extraordinary circumstances. Such a reason has been endorsed by a Full Bench of this Court in the decision reported in AIR 1991 Madras 323 (Vidya Charan Shukla Vs. Tamil Nadu Olympic Association)

7. In the present case, we find that since adequate remedy is available to the petitioner under Order 39 Rule 2A C.P.C., it will not be advisable for this High Court to exercise its extraordinary jurisdiction and proceed under Section 10 read with Section 12 of the Contempt of Courts Act and interfere with the proceedings of the Trial Court, particularly when the suit is pending and the issues are at large before the Subordinate Civil Court.

8. Therefore, while refusing to entertain the matter, it is made clear that in case the petitioner files any application under Order 39 Rule 2A C.P.C., such application shall be considered by the appropriate Court in accordance with law. With the above observation, the contempt petition is disposed of.

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